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Chair

Mr. Robert Oliphant

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● (1105)

[*English*]

The Chair (Mr. Robert Oliphant (Don Valley West, Lib.)): I'm going to call this meeting to order as members take their places.

This is the 107th meeting of the Standing Committee on Citizenship and Immigration. We are continuing and perhaps even concluding our study of the Immigration and Refugee Board's appointment, training, and complaint processes.

I want to thank Ms. King, who is the Registrar at the Justices of the Peace Review Council in Ontario, for joining us today.

I'm sure you've been told the background to this. We've been looking at training and the process of appointments. In looking at the complaints process in particular, we recognize the difference between judicial bodies, quasi-judicial bodies, and administrative law bodies, etc. We were looking at the different systems of complaint processes that could inform our examination of the current system at the IRB.

Thank you very much. You're our only witness today. To give you a bit of a breakdown, we'll probably take about 45 minutes, hear a presentation from you, and then questions from both sides of the House. We'll see where we're at from there.

You can take it away with an opening statement of up to seven minutes.

Ms. Marilyn King (Registrar, Justices of the Peace Review Council): Thank you, honourable Chair.

Good morning, honourable members.

Thank you for the invitation to have a representative of the Justices of the Peace Review Council attend before the committee.

As the chair indicated, my name is Marilyn King. I am the Registrar of the Review Council. I am a lawyer, and I have a history of public service that has included positions such as a crown attorney, executive director of a community legal clinic providing services to low-income clients, and various financial, policy, and operational roles in the justice sector. I have been the registrar of the review council since January of 2008.

I will give you a brief overview of the review council and its role. I believe you've all been provided with the annual report and also with the brochure that's provided to members of the public through various places. There's more detail in there, but briefly, given the role of justices of the peace in the administration of justice, they are expected to be sensitive to the high expectations of the public that judicial officers will remain worthy of trust, confidence, and respect.

In that context, the review council was established by the Justices of the Peace Act as an independent body to receive and investigate complaints about the conduct of justices of the peace. The current composition of the review council and its legislated responsibilities were established in 2007.

The objective of the review council, like other judicial discipline bodies, is to preserve or, if necessary, restore public confidence in the judiciary in general. Case law in the courts recognizes that judicial discipline bodies must determine the appropriate disposition that preserves or restores the integrity not just of the individual justice of the peace, but also of the whole of the judiciary

In terms of membership, to carry out its role, the review council must respect judicial independence in judicial decision-making, while providing a means of accountability for judicial conduct. The review council has members with knowledge of judicial decision-making, the nature of judicial independence, and the work being carried out by justices of the peace, as well as members who can provide input from the perspective of the public.

The members who review and investigate complaints and determine the appropriate disposition are three judges of the Ontario Court of Justice who are appointed by the chief justice, one regional senior justice of the peace appointed by the chief justice, three justices of the peace appointed by the chief justice, and four community members appointed by the Lieutenant Governor in Council on the recommendation of the attorney general. There is also one lawyer appointed by the attorney general from a list of three names received from the Law Society of Ontario.

The act also states that in the appointment of members there is an importance in reflecting Ontario's linguistic duality and the diversity of the population, as well as ensuring overall gender balance.

In investigating, any person can make a complaint to the review council about the conduct of a justice of the peace. Complaints must be made in writing, and there is no mandatory form used. Any letter can be written. The legislation requires that the investigation be conducted in private, and that is unlike the stage of a hearing, if one is ordered, which is generally public.

Each complaint is assigned to a three-person complaints committee that includes a judge, a justice of the peace, and either a community member or the lawyer member, for investigation. If the complaint arises from a court proceeding, court transcripts and audio recordings of the proceedings are ordered and reviewed by all members of the committee. If the allegations relate to conduct outside of the courtroom, an independent lawyer may be retained to interview witnesses and provide the copy with a certified transcript of any interviews.

A written response may be invited from the justice of the peace. If so, he or she is provided with full disclosure about the complaint and the information under consideration by the committee.

A justice of the peace can retain a lawyer to assist in responding, and at the end of the process can request compensation for their legal costs. The committee makes a recommendation to the attorney general, and it's within the discretion of the attorney general as to whether or not to pay the amount recommended.

When a complaints committee's investigation is complete, it has a range of dispositions available to it. They can dismiss the complaint. They can provide advice to the subject of the complaint, either in person or in writing. They can order a public hearing, or they can refer the complaint to the Chief Justice with conditions, such as education or treatment.

● (1110)

The act provides that the review council can establish rules of procedure to guide its complaints committees and its hearing panels. It has, in fact, developed those procedures, and they're available to the public on the review council's website. The review council uses those criteria in the procedures to guide the committee on whether a hearing should be ordered and what the appropriate disposition is. A hearing will be ordered if the complaints committee believes that a finder of fact could find that the justice of the peace engaged in judicial misconduct. The act does not define judicial misconduct, but cases have held that the test for judicial misconduct is the following:

> whether the impugned conduct is so seriously contrary to the impartiality, integrity, and independence of the judiciary that it has undermined the public's confidence in the ability of the judge to perform the duties of office or in the administration of justice generally and that it is necessary for the Judicial Council to make one of the dispositions referred to in the section in order to restore that confidence.

If a hearing is ordered, it is heard by a hearing panel of three different members—again, a judge, a justice of the peace, and either a community member or a lawyer, and those members cannot have been the members who were involved in the investigation of a complaint. Notice of the hearing is posted on the website, and it's put in a newspaper where the complaint arose.

An independent lawyer, called "presenting counsel", is retained to present the evidence to support the allegations that are set out in the complaint that goes in the notice of hearing, and the the justice of the peace, or his or her lawyer, may also present evidence.

After a hearing, if there is a finding of judicial misconduct, the possible dispositions include a warning; a reprimand; an order of an apology; an order of specified measures, such as further education or treatment as a condition of continuing to sit as a justice of the peace; a suspension without pay for up to 30 days; a suspension with pay; or if not any of those, a recommendation to the attorney general for removal from office.

To recommend removal from office, the hearing panel must determine that the conduct of the justice of the peace is so manifestly contrary to the independence, impartiality, and integrity of the judiciary that the confidence in the justice system of individuals appearing before that justice of the peace or of the public would be undermined, rendering the justice of the peace incapable of performing the duties of his or her office.

In summary, public confidence in the administration of justice is viewed to be of paramount importance. Justices of the peace are, for many members of the public, their first and often only experience in the justice system, and they are the face of justice. The complaints process carried out by the review council therefore has a role in maintaining and restoring public confidence in the judiciary and in the administration of justice.

Thank you. I tried to keep that to seven minutes.

The Chair: Thank you very much. That was very helpful, and thank you for your public service. I recognize that it's not in your job description to appear before a House of Commons standing committee, but it's very helpful for us, so thank you for being here.

Ms. Alleslev has the floor for our first questioning.

Ms. Leona Alleslev (Aurora—Oak Ridges—Richmond Hill, Lib.): I'd like to echo that. Thank you very much, because this really does give us a clearer perspective on what an alternative type of review board looks like.

My first question is around the fact that yours in an independent review board. Could you give us some idea of why that's important? Could you give us any advice on how to determine what criteria we should use to determine whether the process of a review board should be independent or within the system?

● (1115)

Ms. Marilyn King: In the case of the Justices of the Peace Review Council, it should, in particular, be independent of the government. The government should not be perceived to be influencing or having any role in the outcome, so that it is independent of the government. That is why the chief justice appoints some of the members. Although the attorney general and the Lieutenant Governor in Council do play a role in appointing community members, to my understanding that's because that process is done through the Public Appointments Secretariat, which probably also exists by analogy in the federal system. The law society, of course, puts forward three names. The law society is effectively doing a preliminary screen.

The result is that the people who are investigating complaints and making the decisions on the complaints are doing that independently, based on the input they bring from their various backgrounds, not controlled by any person.

The other layer that supports that independence is the confidentiality of the process, which has, in fact, been challenged by the media. The *Toronto Star* challenged it recently with regard to another body that I support and that's analogous to this one. The confidentiality of the process means, for example, that even though the chief justice has a role in appointing members of the bench to the body, she does not have knowledge of complaints that come in the door unless a public hearing is ordered or unless a disposition is a referral of a complaint to her. Confidentiality in the process supports that independence.

My experience, in the eight years I've been there, is that having the body making its decisions independently, but also having their procedures public so that people know what's happening...and also having an annual report.... When you have an opportunity to look at the annual report, you'll see that it does provide case summaries on every complaint that comes in the door. If it's not ordered to be a public hearing, there are still case summaries provided.

I have participated with a group of lawyers who do what I do in the States. My experience has been that the annual report put out by the review council provides, comparatively speaking, a fairly high degree of detail on the nature of complaints that come in the door. When you have an independent body making decisions, everyone knows the kind of people who are on the decision-making bodies—the complaints committee and the hearing panel—and everybody knows, if they read the annual report, the kinds of complaints that come in, how they are addressed, and the reasons they are addressed. That all supports the public confidence in the process. In some provinces they don't have a body set up like this one. If a complaint simply goes to a chief justice, those additional supports to preserve or restore public confidence are not, respectfully, the same, in my opinion.

I don't know if that answers the question.

Ms. Leona Alleslev: It absolutely does. What you've done is to give us a reason for its being independent but not public, and at the same time transparent, if I understood you correctly.

Ms. Marilyn King: Yes.

Ms. Leona Alleslev: By publishing its procedures and composition; having three separate bodies choose its composition, in a way; and with the code of conduct, the sanctions, and an annual report, you're addressing the requirement for transparency as well as independence, but you're still keeping the process confidential. Did I get that right?

Ms. Marilyn King: I would add a couple of things to that. The process is confidential unless the threshold is reached where a public hearing is ordered.

Ms. Leona Alleslev: I meant "procedures". The procedures are public.

Ms. Marilyn King: Yes. As well, if it's a serious enough complaint to warrant a hearing, the hearing is public. Right now, for example, I think we have three or four public hearings under way.

Ms. Leona Alleslev: There's a certain threshold that determines whether or not—

Ms. Marilyn King: Yes.

Ms. Leona Alleslev: That's brilliant.

Now let's talk about the composition of the panel. You stated that it's not one person and that it often will have a community member or honest broker on it. Can you give us some rationale for why that's important in maintaining the public confidence?

Ms. Marilyn King: Yes. It always has three at the investigative stage—a different three if it's serious enough to warrant a hearing. It's important to have someone on each of those bodies, which the judge and justice of the peace do. They provide an understanding of the work of the person who's being complained of, for example.

It's very important to have community input. The lawyer, the community person, or whoever the third person is on the committee or hearing panel does bring, in my experience, valuable input from members of the public. The other members, again in my experience, very much seek out and value the input from the community member as well. Sometimes the judiciary may see it from the perspective of what the justice system is to them on a day-to-day basis, whereas a member of the public might have a different perspective. They're not as familiar with the justice system, and they're seeing it the way a member of the public would see it. Having a member of the public on it, whether it's the lawyer or whether it's one of the other four community members, in my experience is very valuable.

● (1120)

Ms. Leona Alleslev: Fantastic.

The following is an unfair question to ask you, but you are the expert. What would you say are some of the areas you would like to strengthen in the review council process? Therefore, what recommendations would you make to us in looking at that kind of complaints review process?

The Chair: Please respond very briefly, if you have anything.

Ms. Marilyn King: I'll just tell you how we do strengthen the review process. In the course of hearings—and sometimes not hearings, but usually in hearings—they tend to be represented by lawyers, so issues may arise that show something in the procedures that could be improved, refined, or clarified. The procedures are basically viewed as live documents. If a deficiency or a weakness is noted in the procedures, they aren't locked in stone. The legislation provides that they have the authority to make the procedures, but the procedures are up to the council.

Ms. Leona Alleslev: Excellent. Thank you very much.

The Chair: Thank you very much.

Mr. Maguire.

Mr. Larry Maguire (Brandon—Souris, CPC): Thank you, Mr. Chair.

Welcome, and thank you for your testimony, Ms. King.

I was particularly interested to hear that the justices of the peace have panels to hear these complaints made against them. Do you think that the system is preferable to having just the chairperson hear complaints, as is the case with our IRB?

Ms. Marilyn King: I apologize, I only learned about this on Friday, so I didn't have a chance to research the structure of the IRB. I'm sorry that I don't know that. If I'd had time, I would have researched that.

My experience is that having the input of three people with different perspectives is beneficial. They do have different perspectives on it. It can be complicated, in terms of what scenarios might come in the door.

The other thing this does is that it keeps the chief justice, in our case, preserved from the process. One of the potential dispositions can be referral to the chief justice, who meets privately with the judicial officer and can discuss the concerns of the committee. That can be a very remedial, educational step. If she were dealing with all of the complaints, it would be harder to communicate what happened —and some of the feedback that comes out of that meeting—back to the members of the public. Having the body independent from the chief justice allows for that type of remedy, but it still allows for the body to provide that information back.

If the chief justice were dealing with all of the complaints, it would be so much more difficult to provide the degree of information and feedback back to the public, and to be transparent about what went on. I can't speak for your process; I can only speak for my own.

Mr. Larry Maguire: Thank you.

Do you think that the creation of the justice of the peace advisory council has improved the quality of justice of the peace appointments?

Ms. Marilyn King: At the same time that this format of the Justices of the Peace Review Council was established in 2007, a more rigorous appointments process was put in place. In the time I've been there, I certainly have seen hearings occur, and I've seen all of those dispositions pretty much implemented.

I have to have some confidence that the process is working. If justices of the peace are given an opportunity to alter their conduct, and they come back for a second hearing—which actually happened recently, twice—that does show there's still a process there and there's still a remedy there for it to come back. The public would say the process isn't perfect, but my perception is that it is effective.

● (1125)

Mr. Larry Maguire: What is the advantage, then, of having a justice of the peace review council?

Ms. Marilyn King: It provides a structure to inform the public and a remedy for the public if they're concerned about the conduct of a justice of the peace. It provides a remedy to make that justice of the peace accountable. It provides dispositions to alter that conduct. It provides an educational platform, if you like, so that other justices of the peace know the expectations of what their conduct should be. When we put out the annual report each year, we send a copy of that annual report to every justice of the peace sitting on the bench, so that they have the opportunity to be educated as well. The primary thing is it provides a framework for accountability for judicial conduct that otherwise would not be there.

Mr. Larry Maguire: Thank you.

How much information about complaints against the justices of the peace is made publicly available?

Ms. Marilyn King: How much information about the complaints is made available?

Mr. Larry Maguire: Yes.

Ms. Marilyn King: I don't know if you were provided the annual report. I did send the electronic version.

By way of an example, where there's a complaint and it did not meet the threshold to order a public hearing, it still provides the information that a complainant made a complaint, what kind of court she appeared in, and what the allegations were of what conduct. In this case, for example, the complainant believed that the justice of the peace was unfair, racist, and ignored her and so on. All of that would be set out.

The steps taken by a complaints committee are set out, so it would say that the complaints committee ordered the court transcript or had witnesses interviewed. If it's not dismissed, it will disclose that the justice of the peace was invited to respond. Some information of what they responded would probably be included in the case summary. The disposition is there. The reasons for it are there. If the committee had concerns because of the principles of judicial office that were not upheld by the justice of the peace, that information is there.

This particular case summary that I'm looking at, for example, is about two and a half pages long. It varies by complaint and by complexity of the complaint. If it's a hearing, all of the decisions made by the hearing panel are public. The hearing itself is fully public as well. Basically, the open court principle applies if it's a hearing.

Mr. Larry Maguire: Thank you.

What we've heard a great deal in this committee, in hearing testimony throughout the past months, is that there's a sensitivity required by members in regard to the panels and appeals. How much sensitivity training do justices of the peace receive in regard to their role?

Ms. Marilyn King: Because I don't oversee their training, I can't speak to the details of it, but the education plan for justices of the peace is posted on the review council's website. My understanding is that, since 2007, justices of the peace do receive very extensive training when they are appointed to the bench. When you say "sensitivity training", I'm not sure if you're meaning so that you won't conduct yourself in a discriminatory manner or...?

Mr. Larry Maguire: That's part of it, thank you, but we spent a good deal of time on whether the panel should be made up of lawyers and how much training you should have as a member in regard to the law. Or, is it more just what the member would expect or, through their lifetime experiences, add to that role? I'm just wondering about that. Some of them may never have been in a situation like that. I'm just wondering if the justices of the peace receive any kind of training in regard to this role that we could use as a reference here.

Ms. Marilyn King: Again, I'm sorry to have to clarify. Justices of the peace who are sitting on the review council and dealing with complaints...?

● (1130)

Mr. Larry Maguire: Yes.

Ms. Marilyn King: Every member of the review council, whether a justice of the peace, a judge, a lawyer, or a community member, receives orientation education when they join the council. They get it again when they're going on a hearing in terms of covering the nature of an overview of what the process is, explaining the criteria, and reminding them of what the law is for the threshold for a hearing being ordered. Also, they're provided with some relevant case law. Every member gets orientation education, regardless of their background.

The Chair: I'm afraid I need to cut you off there.

Ms. Kwan, you have about eight minutes.

Ms. Jenny Kwan (Vancouver East, NDP): Thank you very much, Mr. Chair, and thank you, Ms. King, for your testimony.

How are the panel's community members or community representatives chosen?

Ms. Marilyn King: My understanding is that they apply through the public website of the Public Appointments Secretariat. I'm not involved in that interview process. I know that they have to provide their resumé, and I believe they have to provide references; it's through the normal Public Appointments Secretariat process. Then I'm informed of who the members are. I don't have input into who those people are.

Ms. Jenny Kwan: I see. A pool of people, then, is selected through that process. Then, for each of the complaints, do they just get assigned to the specific complaint?

Ms. Marilyn King: Oh, I'm sorry. I misunderstood you.

Through the Public Appointments Secretariat, they're appointed to the council, so there are four in a pool to select from for the community members. They're assigned to investigate complaints based on various criteria. For example, where did the complaint arise? We avoid assigning complaints to members who work or live in the area where a complaint arose, so they would be perceived to be more neutral and objective. The caseload determines it, so we just try to make sure that everybody has an equal number of them as well. Then, of course, if it's ordered to a hearing, they are eliminated. If they have been on the investigation, they cannot be on the hearing panel. It's geography and caseload, really, that are the critical things.

Ms. Jenny Kwan: In determining the seriousness of a complaint, in determining the threshold of whether or not it goes to a public hearing, how is that threshold set and who makes it?

Ms. Marilyn King: The threshold is actually set out in the procedure, so the public knows what the criteria are. The committee decides whether those criteria have been met by conducting the investigation and considering the evidence gathered during the investigation. At that point, if they believe that the threshold set out in the public procedures and the criteria have been met, then it's ordered to a public hearing.

Ms. Jenny Kwan: I see, so then you meet full transparency and accountability, so that people know where the threshold is. If you violate this threshold based on an independent investigation, then this is how it is going to proceed.

Ms. Marilyn King: Yes.

Ms. Jenny Kwan: That's very helpful.

Now, in a situation where a complaint has been made and substantiated against a particular individual, and let's say some sanctions have been put in place, whether they be additional training or whatever, what process do you go through to ensure that the remedy or the additional sanctions have been effective? What kind of evaluation and follow-through...?

Ms. Marilyn King: No, there isn't any evaluation to see if it's been effective. For example, the only one I can think of that this would apply to would be if there were further training or treatment or counselling ordered. Generally, that is assigned through a public order for the chief justice to take steps to ensure that this happens. The chief justice reports back to confirm that those steps were taken. If it's an order of apology, the apology is always communicated in writing through our office, and then we communicate that to the complainant or the person affected by the misconduct, just to ensure that everyone knows what the apology was, that it was appropriate, and that it did take place.

In terms of the other remedies, for example, if it were a suspension for 30 days or less, then I guess the way it's known to be effective is if we get another complaint about the person. For example, there was a former justice of the peace who had a public hearing, after which further counselling and training was ordered, but then we had another complaint, and following the second hearing he was removed from office.

● (1135)

Ms. Jenny Kwan: I see.

As to the outcomes of the complaints, are the only outcomes that are made public those that result in remedies? In all the other cases, if they have not met the threshold, would that be kept confidential?

Ms. Marilyn King: No, that isn't correct. The annual report includes every complaint that comes in the door and is within the jurisdiction of the council. Even if it's dismissed, it's described in there. If it's not ordered to a public hearing, the legislation says that the names of the complainant and of the justice of the peace are not to be made made public, because a hearing was not ordered. That threshold wasn't reached. A case summary, however, for every complaint is provided in the annual report. In addition to that, at the end of the complaints process, even if it's a dismissal, advice, or whatever, the complainant receives a letter in writing to inform them of what happened with their complaint. For every complaint, there's public information.

Ms. Jenny Kwan: I see. Do you have a list of the sanctions that may apply, or that you can share with the committee with respect to complaints?

Ms. Marilyn King: Yes. The list of dispositions is what I had indicated. It can be either a dismissal.... If there's no merit to it or it doesn't amount to really much.... A lot of them are decision based as well. They really want to change the decision, and there's no real conduct there. Those would be dismissals or, if it doesn't meet the threshold for a hearing but requires some remedial step, there may be advice in person or an advice letter that goes to the justice of the peace, or it can be a referral to the chief justice, which is viewed to be a significant disposition where you have to go to meet privately with the chief justice, possibly with conditions or an order for a hearing. That's the first step.

If it goes to a public hearing, it can be a warning, a reprimand, an order of apology, and further measures like education or treatment, a suspension up to 30 days with no pay, a suspension with pay, or a recommendation to the attorney general for removal from office.

Ms. Jenny Kwan: What is the general timeline for a complaint to be investigated so that people can know what the outcome is?

Ms. Marilyn King: I'd have to say that we've never measured that, because it really varies. If it's a very straightforward one that requires one court transcript, for example, maybe that would just take a few months, but it can be more complicated, a very long proceeding that requires many transcripts or one that requires interviewing witnesses. For example, the one where I indicated the justice of peace was removed from office involved sexually inappropriate conduct, and I think in that case over 30 witnesses were interviewed. That took a considerable period of time. That one took longer. During the process, he raised a lot of legal arguments, so that one took a couple of years.

The Chair: I'm afraid I need to end that there.

Mr. Whalan.

Mr. Nick Whalen (St. John's East, Lib.): Thank you very much.

Thank you to the witness for her public service. It's quite substantial.

Ms. Marilyn King: Thank you.

Mr. Nick Whalen: The 2015 report that you sent is really interesting. It seems like you're carrying and resolving about 40 complaints per year through that process. Is that roughly still the run right now for your office?

Ms. Marilyn King: Until the annual reports are tabled, I can't give public information out on that.

Mr. Nick Whalen: Okay.

Ms. Marilyn King: There is a tabling requirement in the legislation. This is the most recent one that has been tabled, so it's the last one I can speak to.

Mr. Nick Whalen: Thanks, Ms. King.

Ms. Marilyn King: You've seen the numbers in there.

Mr. Nick Whalen: Yes.

Ms. King, were you involved with the administration of the review council back in 2015 as well?

Ms. Marilyn King: I've been with the review council since January 2008.

Mr. Nick Whalen: For the year 2015, what roughly was the overall cost for administering the review council?

Ms. Marilyn King: Honestly, I don't know that. I'm sorry. I didn't bring that kind of information. I don't know. I'd wouldn't want to guess at that.

Although I don't know the cost, I can tell you that we are a relatively small office. I'm the only lawyer. There are two assistant registrars who are not lawyers. There is one administrative assistant. These four people support the council, and I also support an analogous Ontario judicial council that takes complaints about provincial judges, so we have to be pretty efficient.

● (1140)

Mr. Nick Whalen: I'm not trying to say that we need to skimp on the administration of justice and preservation of the—

Ms. Marilyn King: No, no.

Mr. Nick Whalen: I just want to get a sense of what size office we're talking about to administer the process.

Ms. Marilyn King: Yes.

Mr. Nick Whalen: It seems that the number....

Go ahead.

Ms. Marilyn King: I was just going to say that it is a small office. If you're going to recommend something, I would recommend maybe that you go a little bit bigger. I am the registrar, so I oversee day-to-day operations. I provide legal advice and legal services to both councils. I support all of the public hearings. I assist in drafting documents, and I'm the media spokesperson.

Mr. Nick Whalen: I know you didn't get an opportunity to delve deeply into the structure that we're trying to make some recommendations on, but the IRB has four panels, an immigration division, a refugee division, and then an appeals division for each of those. If I tried to draw some analogy, the lower levels of the immigration and the refugee divisions have roughly the same number of people that the chief justices have. Those folks are all unionized public servants. The appeal division would be Governor in Council appointments.

Do you see any issues that might arise in the context of your review process were the justices of the peace to be unionized? It's a hypothetical question.

Ms. Marilyn King: I don't think I can answer that question. I'd have to really think about that. I'd be reluctant to answer that on the fly. I am, after all, a lawyer. I'd need to think about that.

Mr. Nick Whalen: Fair enough. It's just one of the things that we're coming to and struggling with. I just thought that you had an opinion, maybe it would be insightful.

With respect to the other level, then, the Ontario Judicial Council, what are some of the key differences between the procedures you have in place for reviewing judicial misconduct as opposed to justice of the peace misconduct?

Ms. Marilyn King: It's actually very analogous. I would say there are really two key differences.

The Judicial Council has one more level of review, so it has a level of review that does the investigation and it reports to a middle level of review that has four members of that council on it. Then, if it's ordered to a hearing, it goes to the third level of review. Again every level—investigation, review panel in between, and the public hearing—all have members of the public, a different member of the public at each level.

The other difference is that the Judicial Council does not have available to it the dispositions of advice in person or in writing, and that is a remedy that has been used by the review council but that's not available to the judges.

Mr. Nick Whalen: Okay.

It seems, then, that your office is able to carry both of those.

I just want to see how good an analogy the financials might be when we get them. How many judicial appointments are there in Ontario? How many people would be subject—

Ms. Marilyn King: I'm just going to refer to the annual report for that year.

Mr. Nick Whalen: Perfect.

Ms. Marilyn King: I think it's pretty similar.

In 2016, for example, there were approximately 498 justices of the peace on the bench, and there would probably be a similar number—under 400 but more than 300—judges on the bench, so there would be 300 to 400 of each category.

Mr. Nick Whalen: Fair enough.

When we had Mr. Aterman before us earlier in the week, we were trying to get a sense of what type of conduct should come before the disciplinary panel. Typically, it's just matters related to code of conduct that would be addressed, not issues related to knowledge of the law because they would be subject to appeal. If justices of the peace had demonstrated over a period of time that all of their decisions were being overturned, or they just didn't have the law right, or their competence was beginning to suffer, would that be something that would come before your body as well?

Ms. Marilyn King: There was a complaint—although it didn't go through to a hearing because the justice of the peace fully retired, and if they leave office we lose jurisdiction—that did come forward to the start of a public hearing and it was an allegation of incompetence as a result of a pattern of incompetence over a period of time: not knowing the law and misapplying the law. Yes, we have seen that, but it didn't go through all the way.

In a hearing that was fairly recent—a disposition is pending on it right now—the judicial officer made a decision to issue an information for a criminal charge and a decision to sign off on a subpoena, and the hearing panel found that, although those were judicial decisions, the surrounding circumstances were a cause for concern and shifted it into the realm of judicial misconduct. There is case law that says just because it's decision-making doesn't mean it's excluded from misconduct.

● (1145)

Mr. Nick Whalen: Fantastic.

When I try to look at the charts in the 2015 annual report, it says 12 were out of jurisdiction and zero were loss of jurisdiction. Those "out of jurisdiction" would be like retirements. Would "loss of jurisdiction" be when the chief justice refers something as a criminal matter and has it dealt with elsewhere?

Ms. Marilyn King: "Out of jurisdiction" would probably mean that it's strictly decision-based. There's no conduct involved in it.

"Loss of jurisdiction" would mean that the individual fully retired and is gone, or died.

Mr. Nick Whalen: Would it be possible, if there's some type of sexual misconduct alleged against a judge and it goes to criminal proceedings, separate and apart from this, that both processes would still continue? This would have to be resolved as well as whatever criminal charges there are.

Ms. Marilyn King: That's right.

Mr. Nick Whalen: This process would not be halted.

Ms. Marilyn King: It depends on what the evidence is, but this process would not be prevented because of that. That's correct.

Mr. Nick Whalen: Thank you very much.

I'll get another opportunity to ask some questions about how you feed into training later.

The Chair: No, I think that's the end, actually.

The notice of meeting said until 11:45.

Mr. Nick Whalen: I was told I would have more.

The Chair: We might have.

We want to thank you for your help with our work. The committee is now going to move to an in camera business meeting. Thank you for taking the time with us.

Ms. Marilyn King: You're welcome. Thank you very much for your interest in the council. I really appreciate it. It's the council who actually sent me.

The Chair: We'll suspend for a few moments and take a stretch as we move into an in camera meeting.

[*Proceedings continue in camera*]

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